

MEMO ENDORSED

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Hon. Judge P. Kevin Castel
Daniel Patrick Moynihan Courthouse
United States District Court
For the Southern District of New York
500 Pearl Street
New York, NY 10007

USDS SDNY

DOCUMENT

October 31, 2007

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*Defendant may file
a sur-reply by
November 5 and
plaintiff may file a
sur-reply by November 7.
Any other else?
SO ORDERED
USDS
11-1-07*

Re: Ventura Foods LLC v. Supreme Oil Company, Incorporated a.k.a., Admiration Foods(07 Civ. 7338) (PKC) (MHD)

Dear Judge Castel:

We represent the Defendant Supreme Oil Company Incorporated a.k.a., Admiration Foods in the referenced action.

This is a trademark infringement action in which the Plaintiff seeks the *extraordinary* remedy of a preliminary injunction to enjoin Defendant from selling a product under the trademark MEGA Fry Liquid Shortening The Longest Lasting Frying Oil Guaranteed, and its yellow packaging design (trade dress) (the "Mega Fry" mark).

We are contacting the Court to request permission to file and serve a sur-reply to Plaintiff's Reply Brief filed October 25, 2007. The reasons for this request are several:

Plaintiff has now submitted three briefs in support of its Motion for Preliminary Injunction: A Memorandum in Support, filed August 17, 2007; a Supplemental Brief, filed October 9, 2007; and a Reply Brief, filed October 25, 2007. Plaintiff has also filed a Motion to Strike certain pages of Defendant's Memorandum In Opposition to the Motion for Preliminary Injunction and certain statements contained in the declaration of Supreme's President Mike Leffler.

Defendant seeks a fair opportunity to clarify and rebut certain of Plaintiff's statements made in Plaintiff's Reply Brief regarding its delay in filing its motion for preliminary injunction and arguments relating to Plaintiff's asserted traddress rights and the breadth of the injunction which Plaintiff seeks.

Defendant's sur-reply would clarify or rebut the following:

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(1) Plaintiff claims in its Reply Brief that its long delay in filing the motion does not demonstrate lack of irreparable harm and Plaintiff asserts its reliance upon alleged good faith settlement discussions as an excuse for delay. Defendant requests the opportunity to rebut these factual assertions which will clarify the issues for the preliminary injunction hearing.

(2) Plaintiff claims exclusive rights in the industry to the use of yellow containers and the 10 quart size container for liquid shortening products and Plaintiff claims that its exclusive rights in yellow containers would not place Defendant Supreme at a competitive disadvantage. Plaintiff also incredulously claims the exclusive right to depict fried foods in a frying basket for use in advertising their MEL-FRY liquid shortening. Plaintiff seeks a broad injunction enjoining Defendant from the use of yellow containers and frying foods in a basket which if granted would not only unreasonably restrain Defendant Supreme but also would unreasonably restrain other competitors in the field. Defendant requests an opportunity to address the public policy implications of such an injunction and the hardship it would cause Defendant and others in the industry.

In view of the foregoing, Defendant requests permission to file a sur-reply brief at the same time its opposition to Defendant's motion to strike is due, namely November 8, 2007.

In view of the foregoing, we request that the Court grant the extensions requested herein.

Respectfully submitted,


Edward P. Kelly

cc: Kerry Brennan, Esq.
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Counsel for Defendant Supreme Oil Company